IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

THURSDAY, THE 16TH DAY OF DECEMBER 2021 / 25TH AGRAHAYANA, 1943

RFA NO. 400 OF 2006

AGAINST THE JUDGMENT AND DECREE DATED 18.03.2006 IN OS 252/2000 OF II ADDITIONAL SUB COURT,THIRUVANANTHAPURAM

APPELLANT/PLAINTIFF:

N.RAMASWAMY
S/O.NAGENDRAN ACHARI, T.C.38/2774,, PAZHAYASALA,
THYCAUD, THIRUVANANTHAPURAM.

BY ADV SRI.GEORGE SEBASTIAN

RESPONDENTS/RESPONDENTS:

1 RAMANATHAN, s/o. KUMARASWAMI ACHARI
T.C.41/545(1), MUTTATHARA VILLAGE,, THIRUVANANTHAPURAM.

2 P.RATHAN, W/O.RAMANATHAN ACHARI,
T.C.41/545(1), MUTTATHARA VILLAGE, THIRUVANANTHAPURAM.

ADDL.3 R.SURESH
S/O. RAMANATHAN ACHARI, TC 41/545(1) , MUTTATHARA VILLAGE, THIRUVANANTHAPURAM-695004.

ADDL.4 R.SREEKANTH
S/O. RAMANATHAN ACHARI, TC 41/545(1) , MUTTATHARA VILLAGE, THIRUVANANTHAPURAM-695004.

(LEGAL HEIRS OF THE DECEASED R1 ARE IMPLEADED AS ADDITIONAL R3 & ADDL.R4 VIDE ORDER DATED 16.12.2021 IN I.A.NO.547/2018)

BY ADV BLAZE K.JOSE

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 16.12.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

A suit for return of the advance amount covered by a contract for sale was dismissed by the trial court under a mistaken impression that in order to get a decree, the plaintiff has to show the readiness and willingness as mandated under Section 16 of the Specific Relief Act. The question of readiness and willingness would arise only with respect to the grant of specific performance. Normally, it will not have any application while ordering return of the advance amount.

2. It is a case wherein, the execution of the agreement and receipt of advance amount was admitted by the parties. Admittedly, there is no pre-quantification or pre-estimate of the damages included in the contract for sale. As such, the parties are governed by Section 74 of

the Contract Act and unless there is evidence to show the actual damages sustained, no amount can be deducted out of the advance amount.

3. The decree and judgment of the trial court hence will stand set aside and a decree is granted for return of the advance amount, which comes to Rs.5,00,000/-, with pendente lite interest @ 6% per annum and thereafter also @ 6% till the date of recovery charged upon the defendant and the property covered by contract for sale. Return the original title deed produced to the defendant forth with.

The appeal is allowed accordingly. No cost.

Sd/-

P.SOMARAJAN

JUDGE

SPV